

AMENDED IN ASSEMBLY APRIL 28, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1038

Introduced by Assembly Member Houston

February 22, 2005

An act to amend Sections 936 and 938 of, and to add Section 939 to, the Civil Code, relating to construction defects.

LEGISLATIVE COUNSEL'S DIGEST

AB 1038, as amended, Houston. Construction defects.

Existing law regulates actions against contractors and subcontractors for residential construction defects, as specified.

~~This bill would create a rebuttable presumption that a subcontractor is not liable for injuries or damages caused by work performed solely by others. The would also provide that in any cause of action for personal injuries resulting from a construction defect, any contingent attorney fee agreement that exceeds 20% of an award associated with pain or suffering shall be null and void to the extent it exceeds that amount.~~

~~The existing law regulating actions against contractors and subcontractors for construction defects only applies to residences originally sold on or after January 1, 2003.~~

~~This bill would make those provisions also applicable to residences sold prior to that date for items for which the warranty period has not expired.~~

This bill would state the intent of the Legislature to enact legislation governing the use of indemnification and additional-insured provisions in construction contracts with respect to construction defect disputes, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 936 of the Civil Code is amended to~~
2 ~~read:~~

3 ~~SECTION 1. It is the intent of the Legislature to enacting~~
4 ~~legislation governing the use of indemnification and~~
5 ~~additional-insured provisions in construction contracts with~~
6 ~~respect to construction defect disputes in order to expedite the~~
7 ~~fair and efficient resolution of these disputes and to address the~~
8 ~~availability and cost of liability insurance for builders,~~
9 ~~contractors, subcontractors, design professionals, and others, as~~
10 ~~well as addressing the cost of housing.~~

11 ~~936. Each and every provision of the other chapters of this~~
12 ~~title apply to general contractors, subcontractors, material~~
13 ~~suppliers, individual product manufacturers, and design~~
14 ~~professionals to the extent that the general contractors,~~
15 ~~subcontractors, material suppliers, individual product~~
16 ~~manufacturers, and design professionals caused, in whole or in~~
17 ~~part, a violation of a particular standard as the result of a~~
18 ~~negligent act or omission or a breach of contract. In addition to~~
19 ~~the affirmative defenses set forth in Section 945.5, a general~~
20 ~~contractor, subcontractor, material supplier, design professional,~~
21 ~~individual product manufacturer, or other entity may also offer~~
22 ~~common law and contractual defenses as applicable to any~~
23 ~~claimed violation of a standard. All actions by a claimant or~~
24 ~~builder to enforce an express contract, or any provision thereof,~~
25 ~~against a general contractor, subcontractor, material supplier,~~
26 ~~individual product manufacturer, or design professional is~~
27 ~~preserved. Nothing in this title modifies the law pertaining to~~
28 ~~joint and several liability for builders, general contractors,~~
29 ~~subcontractors, material suppliers, individual product~~
30 ~~manufacturer, and design professionals that contribute to any~~
31 ~~specific violation of this title, except that there shall be a~~
32 ~~rebuttable presumption that a subcontractor is not liable for~~
33 ~~injuries or damages caused by work performed by others and for~~
34 ~~which the subcontractor did not perform any services and was~~
35 ~~under no legal obligation to perform services. However, the~~

1 negligence standard in this section does not apply to any general
2 contractor, subcontractor, material supplier, individual product
3 manufacturer, or design professional with respect to claims for
4 which strict liability would apply.

5 SEC. 2. Section 938 of the Civil Code is amended to read:

6 938. This title applies to new residential units where the
7 purchase agreement with the buyer was signed by the seller on or
8 after January 1, 2003, and to residences sold prior to that date for
9 those items to which a warranty period is specified in Chapter 2
10 (commencing with Section 896) to the extent those periods have
11 not expired.

12 SEC. 3. Section 939 is added to the Civil Code, to read:

13 939. In any cause of action for personal injuries resulting
14 from events covered by this part, any contingent attorney fee
15 agreement that exceeds 20 percent of an award associated with
16 pain or suffering shall be null and void to the extent that it
17 exceeds that amount.